

EXHIBIT

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION,

Plaintiff,

v.

Case No.

U.S. DEPARTMENT OF AGRICULTURE, 2:20-cv-0041-

U.S. SMALL BUSINESS ADMINISTRATION, DCLD-CRW

SECRETARY OF AGRICULTURE, and

ADMINISTRATOR OF THE SMALL BUSINESS

ADMINISTRATION,

Defendants.

VIDEOCONFERENCE DEPOSITION OF

AMY STONEBRAKER

DATE: Wednesday, May 25, 2022

TIME: 9:32 a.m.

LOCATION: Remote Proceeding - DC

Washington, DC 20005

REPORTED BY: Timothy Guevara, Notary Public

JOB NO.: 5242863

1 APPEARANCES
 2 ON BEHALF OF PLAINTIFF ULTIMA SERVICES CORPORATION:
 3 MICHAEL E. ROSMAN, ESQUIRE (by videoconference)
 4 MICHELLE SCOTT, ESQUIRE (by videoconference)
 5 Center for Individual Rights
 6 1100 Connecticut Avenue Northwest, Suite 625
 7 Washington, DC 20036
 8 rosman@cir-usa.org
 9 scott@cir-usa.org
 10 (202) 833-8402
 11
 12 ON BEHALF OF DEFENDANTS U.S. DEPARTMENT OF
 13 AGRICULTURE, U.S. SMALL BUSINESS ADMINISTRATION,
 14 SECRETARY OF AGRICULTURE, AND ADMINISTRATOR OF THE
 15 SMALL BUSINESS ADMINISTRATION:
 16 JULIET GRAY, ESQUIRE (by videoconference)
 17 Department of Justice Civil Rights Division
 18 Employment Litigation Section
 19 150 M Street Northeast
 20 Washington, DC 20530
 21 juliet.gray@usdoj.gov
 22 (202) 514-3831

Veritext National Court Reporting Company
 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000

1 PROCEEDINGS
 2 THE REPORTER: Good morning. My name
 3 is Timothy Guevara; I am the reporter assigned by
 4 Veritext to take the record of this proceeding. We
 5 are now on the record at 9:32 a.m.
 6 This is the deposition of Amy
 7 Stonebraker taken in the matter of Ultima Services
 8 Corporation against U.S. Department of Agriculture,
 9 U.S. Small Business Administration, Secretary of
 10 Agriculture, and Administrator of the Small Business
 11 Administration, Case Number 2:20-cv-00041-DCLC-CRW, on
 12 May 25, 2022, taken remotely via Zoom.
 13 I am a notary authorized to take
 14 acknowledgements and administer oaths in the District
 15 of Columbia. Parties agree that I will swear in the
 16 witness remotely outside of her presence.
 17 Additionally, absent an objection on
 18 the record before the witness is sworn, all parties
 19 and the witness understand and agree that any
 20 certified transcript produced from the recording,
 21 virtually, of this proceeding:
 22 - is intended for all uses permitted

Veritext National Court Reporting Company
 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000

INDEX		PAGE
EXAMINATION:		
By Mr. Rosman		6
By Ms. Gray		99
EXHIBITS		
NO.	DESCRIPTION	PAGE
Exhibit 1	MS1 Status Emails	34
Exhibit 2	MS2 Status Emails	39
Exhibit 3	MS3 NRCS Request Letter, 9/6/18	43
Exhibit 4	MS4 Denison Adverse Impact Letter To USDA, 9/20/18	45
Exhibit 5	Decision Memo	56
Exhibit 6	VA1 PCI Offer Letter	76
Exhibit 7	VA2 PCI Contract (2021)	80
Exhibit 8	VA3 2019 Offer Letter	85
Exhibit 9	VA4 2019 Acceptance Letter	86
Exhibit 10	GA1 Rividium Contract (Exhibits attached.)	94

Veritext National Court Reporting Company
 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000

1 under applicable procedural and
 2 evidentiary rules and laws in the same
 3 manner as a deposition recorded by
 4 stenographic means; and
 5 - shall constitute written stipulation
 6 of such.
 7 At this time will everyone in
 8 attendance please identify yourself for the record.
 9 We can begin with you, Mr. Rosman.
 10 MR. ROSMAN: I'm Michael Rosman. I'm
 11 representing the plaintiff in this matter.
 12 THE REPORTER: Ms. Scott.
 13 MS. SCOTT: I'm Michelle Scott. I
 14 represent the plaintiff in this matter.
 15 THE REPORTER: Ms. Gray.
 16 MS. GRAY: I'm Juliet Gray. I
 17 represent the defendants in this matter.
 18 THE REPORTER: Thank you. And Ms.
 19 Stonebraker, will you please just identify yourself
 20 for the record, please?
 21 MS. STONEBRAKER: Yes. My name is Amy
 22 Stonebraker.

Veritext National Court Reporting Company
 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000

1 **Q** Has anyone ever told you that they used the
 2 8(a) program to meet an SDB goal?

3 **A** I have never had anyone indicate that they
 4 used it to meet a goal, no.

5 **Q** We looked at a couple of different contracts
 6 in which you indicated that the wrong NAICS code was
 7 used. Do you recall that?

8 **A** Yes -- yes.

9 **Q** I understand you aren't the one who issued
 10 those contracts, so you can't speak to them in
 11 particular, but do you have any understanding of how
 12 that might happen?

13 **A** The NAICS codes, I think I mentioned, have a
 14 general description of what's covered within the
 15 NAICS. And so the contracting officer read -- has to
 16 read and interpret and determine that that NAICS code
 17 would be appropriate for a specific requirement. It
 18 does not give detailed information or breakdown, labor
 19 types, for you to have a very defined, you know, clear
 20 pinpointed, this is the one. So it's possible that a
 21 CO may choose one that they felt was appropriate, that
 22 maybe there was one that was more appropriate.

Veritext National Court Reporting Company
 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000

1 Where the difference occurs is in profit and overhead
 2 rates. But I haven't seen where they are charging a
 3 fee that isn't in line with non-8(a) companies
 4 performing the same type of services.

5 **MS. GRAY:** Okay. I have no further
 6 questions.

7 **MR. ROSMAN:** Nothing on my end.

8 **THE REPORTER:** Before we go off the
 9 record, I just want to verify the orders for the
 10 transcript. So Mr. Rosman, I just want to verify,
 11 would you order the transcript of today's deposition?

12 **MR. ROSMAN:** Yes.

13 **THE REPORTER:** Okay. Is physical copy
 14 okay or any specific type?

15 **MR. ROSMAN:** Physical copy?

16 **THE REPORTER:** Paper transcript.

17 **MR. ROSMAN:** I didn't know anyone made
 18 physical copies before. Whatever we've been getting
 19 in the past, the PDF.

20 **MS. SCOTT:** Electronic.

21 **MR. ROSMAN:** Michelle will take over
 22 here. Go ahead.

Veritext National Court Reporting Company
 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000

1 **Q** So in your experience, do COs or contract
 2 specialists sometimes make mistakes in picking NAICS
 3 codes?

4 **A** Sure. Absolutely. Well we've seen it twice
 5 today.

6 **Q** Are you familiar with any situation in which
 7 a CO used the NAICS code in order to get a higher
 8 small business-size threshold or to use the NAICS code
 9 that would have a higher small business-size
 10 threshold?

11 **A** I am not aware of anyone that has ever done
 12 that in order to change the -- the dollar threshold.

13 **Q** In your experience is the cost of using the
 14 8(a) program any higher or lower than using other
 15 methods of procurement?

16 **A** I have never seen a difference in -- in the
 17 cost to award 8(a). Generally, when you're buying
 18 admin support services, it's -- it's a Service
 19 Contract Act wage determination driven for the rates
 20 that are paid to the contractor employees. And I
 21 generally see that the contractor offers the minimum
 22 rate that's established in those wage determinations.

Veritext National Court Reporting Company
 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000

1 **MS. SCOTT:** Just the electronic is what
 2 we've been getting, so that's fine.

3 **THE REPORTER:** Okay. And for Ms. Gray,
 4 a copy of the transcript for you as well?

5 **MS. GRAY:** Yes. And I think we've
 6 already ordered it to be expedited.

7 **THE REPORTER:** Yes, okay. I did see
 8 the note for that. Okay. And will you be reading and
 9 signing?

10 **MS. GRAY:** Yes.

11 **MR. ROSMAN:** If you are sending to them
 12 early, could you just notify us when it's being sent
 13 so we can keep track of the time?

14 **THE REPORTER:** Yes. Our office will
 15 reach out as soon as it's being sent.

16 **MR. ROSMAN:** No. I'm asking if you can
 17 let us know when it's being sent to the defendants.

18 **THE REPORTER:** Oh, yes. They will
 19 notify you as soon as anything is being sent to
 20 anyone. They will reach out to your office.

21 **MR. ROSMAN:** Thank you.

22 **THE REPORTER:** Okay. We are off the

Veritext National Court Reporting Company
 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000